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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,385	08/01/2003	David E. Wolf	205-010US2	2826

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EXAMINER

PUNNOOSE, ROY M

ART UNIT PAPER NUMBER

2877

DATE MAILED: 03/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,385

Applicant(s)

WOLF ET AL.

Examiner

Roy M. Punnoose

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-58, 61-65 and 67-70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9, 11-24, 38, 48-52, 57, 58, 61-64 and 70 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 25-37, 39-47, 53-56, 65 and 67-69 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/4/2006.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Acknowledgement is made of Applicant's amendment received on January 04, 2006. The Applicant has amended claims 1, 2, 9, 14, 16, 19, 20, 25, 31, 39, 40, 43, 44, 47, 53-56, 62 and 63, cancelled claims 10, 59-60 and 66, and added new claims 67-70. Currently, claims 1-9, 11-58, 61-65 and 67-70 are pending in the application.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 1-9, 11-24, 38, 48-52, 57-58, 61-64 and 70 are drawn to a fluorescence correlation spectroscopy instrument comprising a sample chamber, classified in class 356, subclass 417.
 - II. Claims 25-37, 39-47, 53-56, 65 and 67-69 are drawn to a fluorescence correlation spectroscopy instrument that does NOT include a sample chamber, classified in class 356, subclass 417.
3. Newly submitted claims 67-69 and original claims 25-37, 39-47, 53-56, 65 which have been amended to depend on claims 67-69, are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The species represented by Groups I and II are independent or distinct because the fluorescence correlation spectroscopy instrument of Group I includes a sample chamber, whereas the fluorescence correlation spectroscopy instrument of Group II does NOT include a sample chamber. For example, the fluorescence correlation spectroscopy instrument of Group II can be used for detecting particles

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in air or in the atmosphere. Claim 1 is generic to patentably distinct species of Group I and Group II above.

4. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5. **Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 67-69, and original claims 25-37, 39-47, 53-56 and 65, which have been amended to depend on claims 67-69 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.**

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Ex-Parte Quayle

7. This application is in condition for allowance except for the following formal matters:

Claims 67-69, and original claims 25-37, 39-47, 53-56 and 65, which have been amended to depend on claims 67-69 have to be cancelled since they have been withdrawn from consideration as being directed to a non-elected invention. Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Allowable Subject Matter

8. Claims 1-9, 11-24, 38, 48-52, 57-58, 61-64 and 70 are allowable.
9. Claims 1 and 70 are allowable because none of the prior art documents disclose a fluorescence correlation spectroscopy instrument comprising a sample flow chamber, and a correlator coupled to the detector for providing autocorrelation data, in combination with the rest of the limitations of the respective claims.
10. Claims 2-9, 11-24, 38, 48-52, 57-58 and 61-64 are allowable because they are dependent on independent claim 1, or, an intermediate claim.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Roy M. Punnoose** whose telephone number is **571-272-2427**. The examiner can normally be reached on 9:00 AM - 5:30 PM.

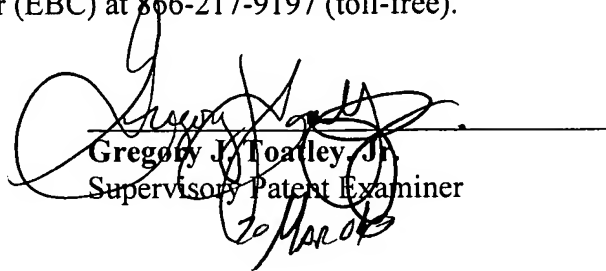
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Gregory J. Toatley, Jr.** can be reached on **571-272-2800 ext.77**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system,

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see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Roy M. Punnoose
Patent Examiner
Art Unit 2877
March 20, 2006



Gregory J. Toatley, Jr.
Supervisory Patent Examiner